IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.677 OF 2007
IN
APPEAL FROM ORDER NO.516 OF 2007

Smt.Mangala Madhav Kharadkar & Anr. ...Applicants

vs.

Mr.Bipin Uttamchand Chopda ...Respondent

Mr.A.K.Abhyankar with Mr.S.G.Karandikar for the Applicants.
Mr.M.J.Jamdar i/b Mr.Amogh Paralikar for the Respondent

CORAM: A.S.OKA,J.
DATE : AUGUST 24, 2007.

P.C.:

1. This is an application for condonation of delay of 195 days in preferring the Appeal from Order. The condonation of delay is sought on the ground that the Appeal could not be preferred in time as the first applicant was suffering from hypertension and the second applicant was ill and was admitted in Grant Medical Foundation Ruby Hall Clinic and was operated upon. It is stated that the second applicant was taking bed rest as per the Doctor’s advice.

2. The application is opposed by the learned counsel for the Respondents on the ground that the reasons given in the application are false. He pointed out that in another suit, the applicants filed an application on 20th January 2007 seeking permission to file written statement by condoning the

delay. He pointed out that the ground of illness was not incorporated in the said application. He also pointed out that on 5th March 2007, a reply was filed by the applicants to the application under Order XXXIX Rule 2A of the Code of Civil Procedure,1908. He pointed out the stand taken by the applicants in the suit filed by a third party viz. Esteem Construction Pvt.Ltd. He invited my attention to the paragraph 4 of the written statement of the applicants which reads thus :

"4...However admittedly the said injunction order passed against these defendants in Spl.Civil Suit No.707/2006 is neither vacated within 180 days nor going to be vacated after the stipulated period of 180 days as the plaintiff or these defendants have not challenged the same. Hence, the question of vacating the said order in near future does not at all..."

He, therefore, submitted that in the aforesaid averments in the written statement of the Applicant filed on 17th January 2007 show that they were not intending to challenge the order which was impugned in the Appeal from Order. He pointed out that the Appeal from Order was filed on 16th June 2007.

3. I have considered the submissions. Perusal of the application dated 20th January 2007 filed by the applicants in

the trial court shows that the reason for delay mentioned in the present application is not set out in the said application. The reason set out in the said application is that the written statement could not be field within 90 days as there was difference of opinion between the defendants (applicants herein) and their Advocate. What has been pointed out in the said application is the reason for not filing the written statement within 90 days. Merely because the reason pointed out in the said application is not the one which is pleaded in the present application, inference cannot be drawn that what has been pleaded in the present application is false. In so far as the filing of reply to the application dated 5th march 2007 is concerned, reply is filed in the Court of Pune. Secondly, the said reply was required to be filed to the application wherein allegation against the applicants is of committing breach of order of injunction. Therefore, merely because the said reply was filed in Pune Court in March 2007, one cannot jump to the conclusion that the reasons set out in the present application are false.

4. Now, coming to the averments made in the written statement in the suit filed by the Esteem Construction Pvt.Ltd., it is obvious that what has been set out in paragraph 4 of the written statement is in the context of the controversy involved in that suit and no inference can be drawn that the applicants had not decided to challenge the

order impugned in the Appeal from Order.

5. This application for condonation of delay may not be elaborately and exhaustively drafted. However, the delay is of 195 days. The learned counsel for the respondents relied upon the decision of Delhi High Court in case of Union of India Vs.K.K.Taneja (A.I.R. S.C. 1992 page 192) and submitted that as the explanation for delay is false, application deserves to be rejected. As set out earlier, no conclusion can be drawn that the explanation is false. While dealing with the application for condonation of delay, a liberal approach is contemplated. Hence, the delay deserves to be condoned. Prejudice which may be caused to the respondent can always be compensated by ordering the payment of costs. Hence, the application deserves to be allowed subject to payment of costs of Rs.5,000/-.

6. Hence, the application is allowed in terms of prayer clause (a) subject to the condition of the applicants paying costs of Rs.5,000/- to the Respondent within a period of six weeks from today. The payment of costs will be a condition precedent.

JUDGE